Exhibit B
Amendment to Rules for 2012 Regulations for Sardine and Pacific Halibut Fisheries

Proposed OAR’s

Revision:

- Page 1 (OAR 635-004-0005) line 13 section (1)(b)
- Page 1 (OAR 635-004-0009) line 30 section (1)(b)
- Page 10 (OAR 635-039-0080) line 361 section (2)(f)
- Page 10 (OAR 635-039-0085) line 375 section (1)(b)
DIVISION 004

COMMERCIAL FISHERIES OTHER THAN SALMON OR SHELLFISH

Halibut Fishery

635-004-0005

Scope of Rules

(1) The Pacific halibut commercial fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR Chapter 635, Division 004 incorporates into Oregon Administrative Rules, by reference:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2011 ed.) as amended; and

(b) Federal Register Vol. 77, No. 56, dated March 22, 2012 (77 FR 16740) [Vol. 76, No. 51, dated March 16, 2011 (76 FR 14300)].

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 004 to determine all rules applicable to halibut fishing requirements.

(3) It is unlawful to take halibut for commercial purposes except as set by Federal Regulations and the IPHC and in accordance with a valid permit issued by the IPHC.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.129

635-004-0009

Halibut Seasons

(1) The Pacific halibut commercial seasons in Oregon are regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR Chapter 635, Division 004 incorporates into Oregon Administrative Rules, by reference:

(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2011 ed.) as amended; and

(b) Federal Register Vol. 77, No. 56, dated March 22, 2012 (77 FR 16740) [Vol. 76, No. 51, dated March 16, 2011 (76 FR 14300)].

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 004 rules to determine applicable halibut fishing seasons.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129
Sardine Fishery

Harvest Guideline

(1) The Pacific sardine commercial fishery in Oregon is managed by the federal government and the State of Oregon. This rule incorporates, by reference

(a) Code of Federal Regulations, Title 50 Part 660, Subpart I (October 1, 2011[2010] ed.) as amended; and
(b) Federal Register [INSERT CITATION WHEN AVAILABLE][Vol. 76, No. 101, dated May 25, 2011 (76 FR 30276)].

(2) Therefore, persons must consult all publications referenced in this rule in addition to Oregon Administrative Rules to determine all applicable sardine fishing requirements. Where regulations refer to the fishery management area, that area is extended from shore to three nautical miles from shore coterminous with the Exclusive Economic Zone.

(3) For the purposes of permit renewal in OAR 635-006-1075 the federal coastwide maximum harvest guideline referenced in section (1) above is 50,526 metric tons.

Publications: Publications references are available from the agency.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & ORS 506.129

Inclusions and Modifications

(1) OAR Chapter 635, Division 004, modifies or is in addition to provisions contained in Code of Federal Regulations, Title 50, Part 660, Subpart I (October 1, 2011[2010] ed.).

(2) The Code of Federal Regulations (CFR), Title 50, Part 660, Subpart I (October 1, 2011[2010] ed.) provides requirements for commercial sardine fishing in the Pacific Ocean. However, additional regulations may be promulgated subsequently, and these supersede, to the extent of any inconsistency, the Code of Federal Regulations.

Publications: Publications referenced are available from the agency.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109 & ORS 506.129

DIVISION 006

COMMERCIAL FISHERIES
COMMERCIAL GEAR; LICENSES, POUNDAGE FEES, RECORDS AND REPORTS

Restricted Participation Systems
Requirement for Permit

1. The following provide general requirements for permits:

   a. Gillnet salmon - see ORS 508.775;
   b. Troll salmon - see ORS 508.801 and 508.828;
   c. Shrimp - see ORS 508.880 and 508.883;
   d. Scallop - see ORS 508.840 and 508.843;
   e. Roe-herring:
      A. It is unlawful for an individual to operate a vessel in the Yaquina Bay roe-herring fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through 635-006-1095;
      B. It is unlawful for a wholesaler, canner or buyer to buy or receive roe-herring taken in the Yaquina Bay roe-herring fishery from a vessel for which the permit required by section (1)(e) of this rule has not been issued.
   f. Sea Urchin:
      A. It is unlawful for an individual to take or attempt to take sea urchins for commercial purposes without first obtaining a permit issued pursuant to OAR 635-006-1035 through 635-006-1095;
      B. It is unlawful for a wholesaler, canner, or buyer to buy or receive sea urchins taken in the sea urchin fishery from a person for which the permit required by section (1)(f) of this rule has not been issued.
   g. Ocean Dungeness crab:
      A. Except as provided under the reciprocity provisions of ORS 508.941(3), it is unlawful for an individual to operate a vessel in the ocean Dungeness crab fishery without first obtaining a vessel permit issued pursuant to ORS 508.931 or 508.941. A Dungeness crab vessel permit is not required for vessels that are engaged solely in setting gear for a permitted vessel and which do not retrieve, retain or possess Dungeness crab.
      B. If the Oregon Fish and Wildlife Commission (Commission) establishes a vessel crab pot limitation or allocation system beyond the 2002-03 ocean crab season, August 14, 2001 is the control date for eligibility criteria related to past participation in the ocean fishery.
      C. In addition to certifying that the vessel is free of crab on November 30 each year, as required by OAR 635-005-0045(1), each vessel operator must declare and certify on the Oregon hold inspection certification form the maximum number of pots that will be used in that season’s fishery before fishing.
      D. A single delivery license may not be substituted for an ocean Dungeness crab permit. Once a vessel has obtained an ocean Dungeness crab permit, Dungeness crab may be landed by the vessel using a combination of an ocean Dungeness crab permit and a single delivery permit in lieu of a commercial fishing and boat license. However, crab may not be landed more than twice in any one crab season using single delivery permits.
      E. Effective December 1, 2006, the number of crab pots allocated to a permit required under section (A) above will be determined as follows:
         i. The allocation will be based on documented landings of Ocean Dungeness crab into Oregon, Washington (excluding landings from the Puget Sound Fishery), or California, using valid Oregon fish receiving...
tickets, or equivalent valid documents from the states of Washington or California, from December 1, 1995 through August 14, 2001;

(ii) The crab pot allocation will be the highest number of pots the vessel qualifies for during the six qualifying seasons, December 1 of one year through September 15 of the next year (except through August 14, in 2001);


(iv) A crab pot allocation of 300 shall be assigned to a permit with minimum landings of 15,020 pounds in the 1995 to 1996 season, or 4,010 pounds in the 1996 to 1997 season, or 5,170 pounds in the 1997 to 1998 season, or 7,083 pounds in the 1998 to 1999 season, or 13,160 pounds in the 1999 to 2000 season, or 8,940 pounds in the 2000 to 2001 season; and

(v) A crab pot allocation of 500 shall be assigned to a permit with minimum landings of 89,020 pounds in the 1995 to 1996 season, or 35,180 pounds in the 1996 to 1997 season, or 39,350 pounds in the 1997 to 1998 season, or 49,450 pounds in the 1998 to 1999 season, or 78,400 pounds in the 1999 to 2000 season, or 37,030 pounds in the 2000 to 2001 season.

(h) Developmental Fisheries: See ORS 506.450 through ORS 506.465 and OAR 635-006-0800 through 635-006-0950.

(i) July 1, 2001 is the control date to establish eligibility criteria for the purpose of future limited entry programs for the commercial groundfish fishery.

(j) Black rockfish / blue rockfish / nearshore fishery -- see ORS 508.945.

(k) Brine Shrimp:

(A) It is unlawful to take or attempt to take brine shrimp for commercial purposes without first obtaining a brine shrimp fishery permit issued pursuant to OAR 635-006-1035 through OAR 635-006-1095;

(B) It is unlawful for a wholesaler, canner, or buyer to buy or receive brine shrimp taken in the brine shrimp fishery from a person for which the permit required by this rule has not been issued.

(C) The Oregon Department of Fish and Wildlife (Department) may issue no more than three permits required by section (1)(k) of this rule.

(l) Bay clam dive fishery:

(A) It is unlawful:

(i) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in any Oregon estuary without first obtaining a coast-wide bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through OAR 635-006-1095;

(ii) To take or attempt to take bay clams, using dive gear, for commercial purposes from subtidal areas in Oregon estuaries south of Heceta Head without first obtaining a south-coast bay clam dive fishery permit issued pursuant to OAR 635-006-1025 through OAR 635-006-1095;
(iii) For a wholesaler, canner, or buyer to buy or receive bay clams taken in the bay clam dive fishery from a vessel or person not issued the permit required by this rule.

(iv) To take or attempt to take bay clams where more than two divers operating from any one boat were in the water at the same time or where more than two persons without permits, excluding persons authorized by the Department for the performance of official duties, were on board any boat while harvesting, possessing, or transporting bay clams.

(B) The Department may not issue more than ten coast-wide permits required by section (1)(l)(A)(i) of this rule and five south-coast permits required by (1)(l)(A)(ii) of this rule.

(C) Permits may be issued to individuals or to vessels, designated at the beginning of the year. Designation may not change during the year.

(m) Sardine fishery:

(A) It is unlawful for an individual to operate a vessel in the Sardine fishery without first obtaining a vessel permit issued pursuant to OAR 635-006-1035 through OAR 635-006-1095. The sardine fishery permit is not required for vessels to retain sardines as incidental catch in other fisheries.

(B) It is unlawful for a wholesaler, canner or buyer to buy or receive sardines taken in the Sardine fishery from a vessel for which the permit required by section (1)(m)(A) of this rule has not been issued.

(C) The Department may issue not more than 26 permits required by section (1)(m)(A) of this rule.

(D) The Sardine Advisory Group as defined under OAR 635-006-1065 may advise the Commission on increasing the number of permits, developing criteria for issuing the new permits, and other regulations concerning the sardine fishery.

(2) The permits required by section (1) of this rule are in addition to and not in lieu of the commercial fishing and boat license required by ORS 508.235 and ORS 508.260.

(3) No vessel may hold more than one vessel permit for a given fishery at any one time.

(4) If permits are issued on an individual basis, no individual may hold more than one permit for a given fishery at any one time.

(5) Unless otherwise provided, permits must be purchased by December 31 of the year the permit is sought for renewal.

(6) No vessel permit may be transferred away from a vessel without the lien holder’s written permission.

(7) Applications for permits shall be in such form and contain such information as the Department may prescribe.

Proof of length of a vessel may be required at the time of application.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109, 506.129 & 508.921 through 508.941

635-006-1065
Review of Denials (Restricted Participation Systems)

(1) An individual whose application for issuance or renewal of a limited entry permit is denied by the Oregon Department of Fish and Wildlife (Department) may request review of the Department’s decision by doing so in
writing to the Commercial Fishery Permit Board (Board). The procedure for requesting review and the applicable
standard of review shall be as follows:

(a) Gillnet salmon - see ORS 508.796;
(b) Troll salmon - see ORS 508.825;
(c) Shrimp - see ORS 508.910;
(d) Scallop - see ORS 508.867;
(e) Roe-herring - see ORS 508.765. For the roe-herring fishery, the Board may waive requirements for
permits if the Board finds that:
   (A) The individual for personal or economic reasons chose to actively commercially fish the permit vessel
   in some other ocean fishery during the roe-herring season; or
   (B) The Board finds that the individual failed to meet the requirements as the result of illness, accident or
   other circumstances beyond the individual's control.
(f) Sea Urchin - see ORS 508.760. For the sea urchin fishery, the Board may waive requirements for permits
if the Board finds that failure to meet the requirements was due to illness, injury or circumstances beyond the
control of the permittee;
(g) Ocean Dungeness crab - see ORS 508.941. For the Ocean Dungeness crab fishery, a permit holder may
request review of the Department's initial crab pot allocation, the Department's denial of replacement of lost buoy
tags, or denial of permit renewal by doing so in writing to the Commercial Fishery Permit Board. The Board may
adjust the number of crab pots allocated to a permit or approve replacement of lost buoy tags as follows:
   (A) The Board may adjust the number of crab pots allocated to a permit:
      (i) Based on additional landings documentation supplied by permit holder according to criteria under
      OAR 635-006-1015(1)(g)(E); or
      (ii) The crab pot allocation may be increased by one tier as described under OAR 635-006-
      1015(1)(g)(E) based on circumstances during the qualifying seasons described in OAR 635-006-1015(1)(g)(E)
      beyond the control of the permit holder which created undue hardship as defined by OAR 635-006-1095(7)(d).
   (B) The Board may approve replacement of lost buoy tags due to a catastrophic loss as defined under
   OAR 635-005-0055(1)(6)(g)(B).
   (C) The Board may waive the permit renewal date requirement if the Board finds that strict adherence to
   this requirement would create undue hardship to the individual seeking to renew a permit. For this purpose,
   undue hardship has the same meaning as in OAR 635-006-1095(7)(d).
   (h) Black rockfish / blue rockfish / nearshore fishery - see ORS 508.960.

(2) The Board may delegate to the Department its authority to waive requirements for renewal of permits in all
fisheries in such specific instances as the Board sets forth in a letter of delegation to the Department.

(3) For those fisheries requiring a $75 application fee for Board review, the fee is nonrefundable. However, if the
Board grants the applicant's request, the nonrefundable fee shall apply toward the permit fee.

(4) Orders issued by the Board are not subject to review by the Oregon Fish and Wildlife Commission
(Commission), but may be appealed as provided in ORS 183.480 to ORS 183.550.

(5) Bay clam dive fishery permit:
(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to OAR 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual’s control.

(c) A party must petition for Board review of the hearing officer’s proposed order within 30 days of service of the proposed order if the party wants the proposed order changed. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

(6) Sardine fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 and 635-006-1095 is denied may make written request to the Board for review of the denial. The review provided in this subsection is in lieu of any such review by the Department or the Commission. The request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for renewal or request to transfer a permit according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the result of illness, accident or other circumstances beyond the individual’s control.

(c) A party, including the Department, must petition for Board review of the hearing officer’s proposed order within 30 days of service of the proposed order if the party wants to file an exception to the proposed order. A party must identify what parts of the proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

[(e) The Sardine Advisory Group:

(A) Shall consist of members appointed by the Commission as follows:

(i) Three members shall be chosen to represent the sardine industry.

(ii) Two members shall be chosen to represent the public.

(B) Is subject to requirements of OAR 635-006-1200 sections (1) and (2).]

(7) Brine shrimp fishery permit:

(a) An individual whose application for issuance, renewal or transfer of a permit established pursuant to 635-006-1075 through 635-006-1095 is denied may make written request to the Board for review of the denial. The
review provided in this subsection is in lieu of any such review by the Department or the Commission. The
request shall be in such form and shall contain such information as the Board considers appropriate.

(b) The Board shall review a denial of an application for issuance, renewal or request to transfer a permit
according to the applicable provisions of ORS chapter 183. Orders issued by the Board are not subject to review
by the Commission, but may be appealed as provided in ORS 183.480 to 183.500. The Board may waive
requirements for renewal of permits if the Board finds that the individual failed to meet the requirements as the
result of illness, accident or other circumstances beyond the individual’s control.

(c) A party must petition for Board review of the hearing officer’s proposed order within 30 days of service of
the proposed order if the party wants the proposed order changed. A party must identify what parts of the
proposed order it objects to, and refer to parts of the administrative record and legal authority supporting its
position.

(d) The Board may delegate to the Department its authority to waive requirements for renewal of permits.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109

635-006-1075
Renewal of Permit
(1) An individual who obtained a limited entry permit may renew the permit as follows:

(a) Gillnet salmon - Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00
license agent fee) for resident applicants and $150.00 fee (plus a $2.00 license agent fee) for nonresident
applicants and a complete application, see ORS 508.781 and 508.790;

(b) Troll salmon - Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00
license agent fee) for resident applicants and $150.00 fee (plus a $2.00 license agent fee) for nonresident
applicants and a complete application, see ORS 508.807 and 508.816;

(c) Shrimp - see ORS 508.892 and 508.907;

(d) Scallop - see ORS 508.849 and 508.858;

(e) Roe-herring permit - Permits may be renewed by submission to the Department of a $125.00 fee (plus a
$2.00 license agent fee) for resident applicants and $175.00 fee (plus a $2.00 license agent fee) for nonresident
applicants and a complete application;

(f) Sea Urchin permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license
agent fee) for resident applicants and $150.00 fee (plus a $2.00 license agent fee) for nonresident applicants and
a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have annually lawfully landed 5,000 pounds of sea urchins in Oregon. If a
permittee obtained a permit later than January of the prior year (because the permit was obtained through the
lottery, or as a result of the Commercial Fishery Permit Board actions or surrender of a permit by a permit holder),
the permittee shall not be required to make the 5,000 pound landing requirement by the following January.
Instead, at the next renewal thereafter, the permittee shall be required to demonstrate that the 5,000 pound landing requirement was fulfilled during the first full year (twelve-month period) in which the permit was held.

(g) Ocean Dungeness crab permit - see ORS 508.941. A permit which is not renewed by December 31 lapses, and may not be renewed for subsequent years.

(h) Black rockfish / blue rockfish / nearshore fishery - see ORS 508.947.

(i) Brine Shrimp permit:

(A) Permits may be renewed by submission to the Department of a $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought; and

(B) The permittee shall have lawfully landed 5,000 pounds of brine shrimp in Oregon in the prior year.

(j) Bay clam dive fishery:

(A) Permits may be renewed by submitting to the Department $100.00 fee (plus a $2.00 license agent fee) and a complete application date-stamped or postmarked by January 31 of the year for which renewal is sought and;

(B) The permittee shall have lawfully made five landings consisting of at least 100 pounds each landing or an annual total of 2,500 pounds of bay clams, using dive gear in Oregon in the prior calendar year;

(C) Logbooks required under OAR 635-006-1110 must be turned into an ODFW office by the application deadline for renewal of a permit.

(D) If a permit is transferred under OAR 635-006-1095(10)(d), annual renewal requirements are waived in the year the transfer occurred.

(k) Sardine fishery:

(A) Permits may be renewed for the following year:

(i) by submitting $100.00 fee (plus a $2.00 license agent fee) and a complete application to the Department date-stamped or postmarked by December 31 of the year the permit is sought for renewal and;

(ii) submitting the logbooks required under OAR 635-006-1110; and

(iii) if during the year preceding the calendar year for which the permit is sought for renewal, the federal coastwide maximum harvest guideline referenced in OAR 635-004-0016 was greater than 100,000 metric tons and the permitted vessel lawfully landed into Oregon either (I) a minimum of 10 landings of sardines of at least 5 metric tons each, or (II) landings of sardines having an aggregate ex-vessel price of at least $40,000.

(B) The Commercial Fishery Permit Board may waive the landing requirements of section (A)(iii) of this rule if it finds that the failure to meet these requirements is due to the permit holder’s illness or injury, or to circumstances beyond the control of the permit holder. Final Orders shall be issued by the Commercial Fishery Permit Board and may be appealed as provided in ORS 183.480 through 183.550.

(C) The Commission may, at its discretion, waive the landing requirements of section (A)(iii) of this rule for all Limited Entry Sardine Permit holders due to unusual market conditions.

(2) An application for renewal in any limited entry fishery shall be considered complete if it is legible, has all information requested in the form, and is accompanied by the required fee in full. Any application which is not
complete shall be returned, and unless it is thereafter resubmitted and deemed complete by December 31 of the permit year sought, the individual shall not be considered to have applied for renewal in a timely manner.

(3) It is the responsibility of the permittee to ensure that an application is complete and is filed in a timely manner. Failure of the Department to return an application for incompleteness or of an individual to receive a returned application shall not be grounds for treating the application as having been filed in a timely and complete manner.

Stat. Auth.: ORS 506.119
Stats. Implemented: ORS 506.109, 506.129 & 508.921 through 508.941

DIVISION 039

MARINE FISH, SHELLFISH AND MARINE INVERTEBRATES

635-039-0080

Purpose and Scope

(1) The purpose of Division 039 is to provide for management of sport fisheries for marine fish, shellfish, and marine invertebrates in the Pacific Ocean, coastal bays, and beaches over which the State has jurisdiction.

(2) Division 039 incorporates into Oregon Administrative Rules, by reference:

(a) The sport fishing regulations of the State, included in the document entitled 2012 Oregon Sport Fishing Regulations;


(d) Federal Register Vol. 76, No. 43, dated May 11, 2011 (76 FR 27508);

(e) Federal Register Vol. 76, No. 51, dated March 16, 2011 (76 FR 14300); and

(f) Federal Register Vol. 76, No. 339, dated December 13, 2011 (76 FR 77415); and


(3) Therefore, persons must consult all publications referenced in this rule in addition to Division 011 and Division 039 to determine all applicable sport fishing requirements for marine fish, shellfish and marine invertebrates.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.146 & 506.119
Stats. Implemented: ORS 496.162 & 506.129

635-039-0085

Halibut Seasons

(1) The Pacific halibut sport fishery in Oregon is regulated by the federal government and the International Pacific Halibut Commission (IPHC). OAR Chapter 635, Division 039 incorporates into Oregon Administrative Rules, by reference:
(a) Title 50 of the Code of Federal Regulations, Part 300, Subpart E (October 1, 2012[2011] ed.), as amended; and

(2) Therefore, persons must consult all publications referenced in this rule in addition to Division 039 to determine applicable halibut fishing seasons.

[Publications: Publications referenced are available from the agency.]

Stat. Auth.: ORS 496.138, 496.162, 506.036, 506.109, 506.119 & 506.129
Stats. Implemented: ORS 496.162 & 506.129